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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LEE FAMILY INVESTMENTS, by and through )  
its Trustee W.B. Lee, Derivatively and on behalf )  
of Nominal Defendant WASHINGTON )  
MUTUAL, INC., )

Plaintiff,

v.

KERRY K. KILLINGER, THOMAS W. )  
CASEY, DEANNA W. OPPENHIEMER, )  
ANNE V. FARRELL, STEPHEN E. FRANK, )  
PHILLIP D. MATTHEWS, MICHAEL K. )  
MURPHY, MARGARET OSMER MCQUADE, )  
MARY E. PUGH, WILLIAM G. REED, JR., )  
JAMES H. STEVER, WILLIS B. WOOD, JR., )

Defendants.

And

WASHINGTON MUTUAL, INC.,

Nominal Defendant.

CV 05-2121 MJP

NOTICE OF REMOVAL OF  
ACTION UNDER 28 U.S.C. § 1441

05-CV-02121-CMP

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON:

PLEASE TAKE NOTICE that, for the reasons set forth below, Defendants  
Washington Mutual, Inc. ("Washington Mutual"), Anne V. Farrell, Stephen E. Frank,

1 Phillip D. Matthews, Michael K. Murphy, Margaret Osmer McQuade, Mary E. Pugh,  
 2 William G. Reed, Jr., James H. Stever, and Willis B. Wood, Jr. (collectively, "the  
 3 Removing Defendants"), through their undersigned attorneys, file this Notice of Removal  
 4 to remove this action from the Superior Court of the State of Washington in and for King  
 5 County to the United States District Court for the Western District of Washington pursuant  
 6 to 28 U.S.C. § 1441.

7 In support of the Notice of Removal, the Removing Defendants state as follows:

8 **BACKGROUND TO THE NOTICE OF REMOVAL**

9 1. On November 29, 2005, plaintiff Lee Family Investments, by and through  
 10 its trustee W. B. Lee ("Plaintiff") filed a complaint (the "Complaint" or "Compl.") in the  
 11 Superior Court of the State of Washington in and for King County commencing the  
 12 derivative action entitled *Lee Family Investments v. Kerry K. Killinger, et al.* (the  
 13 "Action"). A true and correct copy of the Complaint is attached hereto as Exhibit A.

14 2. Among other things, Plaintiff seeks relief in this Action under 15 U.S.C.  
 15 § 7243. Specifically, Plaintiff seeks to compel reimbursement by Kerry K. Killinger,  
 16 Thomas W. Casey, Deanna W. Oppenheimer, Anne V. Farrell, Stephen E. Frank,  
 17 Phillip D. Matthews, Michael K. Murphy, Margaret Osmer McQuade, Mary E. Pugh,  
 18 William G. Reed, Jr., James H. Stever, and Willis B. Wood, Jr. (the "Individual  
 19 Defendants") "of all bonuses and other incentive-based or equity-based compensation paid  
 20 to [them] as well as any profits realized from the sale of Washington Mutual Securities by  
 21 them." (Exhibit A, Compl. ¶ 201.) Plaintiff also alleges as against the Individual  
 22 Defendants various violations of state law relating to their duties as officers and directors  
 23 of Washington Mutual. (*Id.* at ¶¶ 172-199.)

3. The federal statute under which Plaintiff seeks relief, 15 U.S.C. § 7243, was enacted on July 30, 2002, as part of the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 15 and 18 U.S.C.).

4. This matter is related to the case entitled South Ferry LP #2 v. Kerry K. Killinger, et al., CV04-1599C, currently pending in this Court before the Honorable John C. Coughenour (the "Securities Action"). Washington Mutual and several of the Individual Defendants are also defendants in the Securities Action. A true and correct copy of the docket sheet in the Securities Action is attached hereto as Exhibit B.

**REMOVAL PURSUANT TO 28 U.S.C. § 1441**

5. Actions that fall within the original jurisdiction of the United States district courts may be removed pursuant to 28 U.S.C. § 1441(a), which states in pertinent part:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a). District courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, which encompasses the claim brought here under 15 U.S.C. § 7243.

6. Additionally, 28 U.S.C. § 1367 gives district courts supplemental jurisdiction over "over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." That jurisdiction encompasses all of the other claims brought in this Action, which are inextricably intertwined with the claim brought under 15 U.S.C. § 7243.

**THE REMOVAL PREREQUISITES HAVE BEEN SATISFIED**

7. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty days of the commencement of the above Action and is, therefore, timely.

8. True and correct copies of all process, pleadings and orders served upon the Removing Defendants in the state court proceeding are being filed with this Court as Exhibits A and C.

9. Upon filing the Notice of Removal, the Removing Defendants will furnish written notice to Plaintiffs' counsel, and will file and serve a copy of this Notice with the Clerk of the King County Superior Court, pursuant to 28 U.S.C. § 1446(d).

10. No previous application has been made by defendants for this or similar relief.

11. The United States District Court for the Western District of Washington is the federal judicial district embracing the King County Superior Court, where the suit was originally filed, 28 U.S.C. § 128(b), and Seattle is the proper division or location for the matter. LCR 5(e)(1).

12. No defendant in this action other than the Removing Defendants has been served with process. Nevertheless, without waiving service of process, and for the avoidance of any doubt, each defendant named in the Complaint other than the Removing Defendants has expressly consented, in writing, to the removal of this Action. Letters indicating such consent are attached under Exhibit D.

WHEREFORE, Removing Defendants desiring to remove this Action to the United States District Court for the Western District of Washington, hereby request that the filing of this Notice of Removal shall effect the removal of said civil action to this Court.

1 RESPECTFULLY SUBMITTED this 23rd day of December, 2005.

2 Of Counsel:

3 Jay B. Kasner  
4 Scott D. Musoff  
5 SKADDEN, ARPS, SLATE,  
6 MEAGHER & FLOM LLP  
7 Four Times Square  
8 New York, New York 10036  
9 (212) 735-3000

10 Attorneys for Defendant  
11 Washington Mutual, Inc.

Davis Wright Tremaine LLP  
Attorneys for Defendant  
Washington Mutual, Inc.

By 

Stephen M. Rummage, WSBA # 11168  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688  
Telephone: (206) 628-7755  
Fax: (206) 903-3955  
E-mail: [steверummage@dwt.com](mailto:steверummage@dwt.com)

Perkins Coie LLP  
Attorneys for Defendants Farrell, Frank,  
Matthews, Murphy, McQuade, Pugh, Reed,  
Stever, and Wood

By 

Ronald L. Berenstain, WSBA # 7573  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101  
Telephone: (206) 359-8000  
Fax: (206) 359-9000  
E-mail: [rberenstain@perkinscoie.com](mailto:rberenstain@perkinscoie.com)

*per telephone auth.*

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2005, I caused to be hand served, a true and correct copy of the foregoing Notice of Removal of Action Under 28 U.S.C. § 1441 filed in connection with the above-referenced matter upon plaintiff's counsel of record at the following address:

Jess G. Webster  
MIKKELBORG, BROZ, WELLS & FRYER, PLLC  
1001 Fourth Avenue, Suite 3600  
Seattle, WA 98154-1115

DATED this 23rd day of December, 2005.

  
\_\_\_\_\_  
Stephen M. Rummage, WSBA #11168